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The Honorable Larry Craig
Chairman
U.S. Senate Special Committee on Aging
U.S. Senate
Washington D.C.

RE: U.S. Senate Special Committee on Aging Hearing on Long Term Care Liability

Date: July 15, 2004

Dear Mr. Chairman and Members of the Committee:

My name is Theresa Bourdon, and I am a Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries. In addition, I am Managing Director of Aon Corporation's property and casualty actuarial consulting practice. Aon Corporation, through its subsidiary companies, is a leading provider of risk management services, insurance brokerage, human resource consulting, and specialty insurance underwriting. Aon is the leading actuarial consultant to the long term care industry with respect to the evaluation of the cost of patient care liability claims.

I would like to thank the Senate Special Committee on Aging for giving me the opportunity to provide an actuarial perspective on the patient care liability crisis affecting long term care providers in the U.S. This is a very complex issue, yet critically important to the future of the delivery of healthcare to the elderly. It is my hope today, by sharing with you the unique knowledge I have of the liability claims the industry is incurring, to help the committee develop a greater understanding of the issues in order that you may effect policy changes that are in the best interest of the American public.

I feel it is important for members of this committee to understand that I do not work for an insurance company. I provide consulting services to entities, including nursing homes, to assist them in financing their exposure to liability. Most of my clients are self-insured. In this context my testimony is largely focused on the litigation activity of nursing homes as opposed to insurance availability and affordability. Because, regardless of whether a nursing home buys insurance or self-insures, it is an increase in litigation that is the driving cause of the above average increases in the cost of risk per bed occurring in multitudes of states throughout this country. Legislative changes that will reduce the cost of risk and provide greater predictability in the number and size of claims will directly impact the litigation trends. By reducing the litigation trends, you will also be responding to the issue of insurance availability and affordability. The correlation between the two is not one to one due to a number of other variables that influence insurance pricing. However, it is very high.

To help you understand the magnitude of the litigation trends, let me share some statistics with you. Aon has recently completed its fifth annual study of the rising cost of professional and general liability claims asserted against long term care operators. In this study, which includes 24% (approximately 470,000) of the beds in the U.S., costs are projected to reach almost \$2,300 per occupied nursing home bed for incidents alleged to have occurred in calendar year 2003 (see Attachment I). Nationally these costs are now seven times higher than they were in the early 1990's.

On a cost of care basis this means that \$6.27 per day needs to be set aside per long term care resident just to cover the cost of litigation. This is equal to 5% of the countrywide average per diem reimbursement rate for Medicaid, the government source of funding for approximately two thirds of all nursing home residents.

The providers represented in our study are expected to incur \$1 billion in liability claims in 2004 alone. Extrapolated to a national basis this exposure is a multi-billion dollar a year cost to the nursing home industry. And, almost half of the total cost is going directly to attorneys (see Attachment II).

The number of claims against nursing home operators is increasing by approximately 13% annually, with a current rate of 15 claims per year per 1,000 nursing home beds (see Attachment III). If you consider that the size of a typical nursing home is about 100 beds, that's roughly 1.5 claims per facility per year. The rate of increase in the number claims against the long term care industry is unprecedented both in terms of this industry's history and the rate of increase in the number of liability claims incurred by other healthcare providers.

In addition to the growth in the number or frequency of claims, there has been a significant increase in the size or severity of the average award (see Attachment IV). The average size of long term care liability claims, which includes indemnification paid to the plaintiff and all related attorneys fees, has almost tripled from \$65,000 in the early 1990's to between \$150,000 and \$200,000 in more recent years.

Florida and Texas were leaders in driving forward the increase in long term care liability costs. Our 2003 projected loss cost is \$8,200 for Florida and \$5,500 for Texas. Numerous other states across the country are now experiencing increasing cost trends and appear to be headed towards loss costs per bed similar to those in Florida and Texas (see Attachment V). Most notable are Arkansas (at \$5,760), Mississippi (at \$4,070), Alabama (at \$3,310), Tennessee (at \$2,980), and California (at \$2,790).

These rising litigation costs are already beginning to impact the industry in the following ways:

- There is a lack of expansion in the nursing home sector of elder care services. In fact, the number of available nursing home beds is on the decline. Between December 2001 and December 2003, the number of certified nursing home beds in the U.S. dropped from 1,802,722 to 1,780,899, according to CMS OSCAR Data surveys. Large multi-state



Actuarial and Analytics Practice

providers are choosing to leave the states like Florida and Texas, where the cost of care has exceeded the funding available to pay for it. In addition, there is very little expansion into other states.

- Smaller providers and those that have not diversified into multiple geographic regions are in many cases choosing to go uninsured or underinsured. Additionally, the organizations that are buying the facilities being divested by larger multi-state operators are often doing so with materially reduced limits of liability from levels traditionally available from divesting operators. All of this has the effect of reducing the available compensation for patients who truly have suffered a patient care violation.
- Lending institutions are restricting capital investments by more strictly underwriting this industry. Where loans are available, the cost of borrowing has gone up due to the litigation risk, further adding to the cost of delivering healthcare to the elderly.

The longer-term outlook, if reforms are not implemented, is a continued contraction of available nursing home beds, particularly for those Americans who depend on Medicaid funding to provide these services. One doesn't have to be an actuary to figure out the ramifications of such a contraction as the baby boom generation approaches retirement age.

Thank you for the opportunity to provide this testimony. I would be pleased to answer any questions you may have.

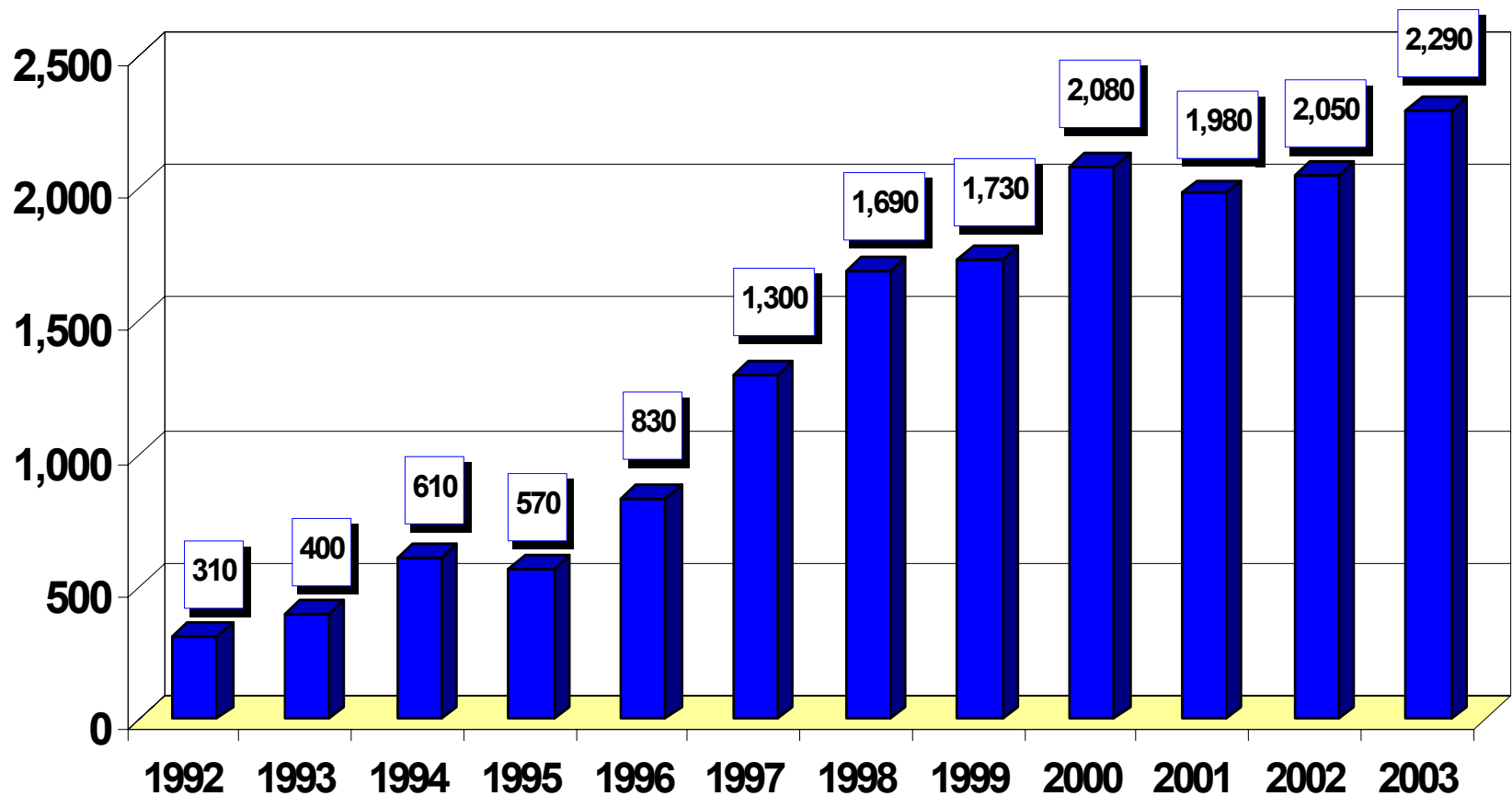
Sincerely,

A handwritten signature in black ink that reads "Theresa W. Bourdon".

Theresa Bourdon, FCAS, MAAA
Managing Director & Actuary
Aon Risk Consultants, Inc.

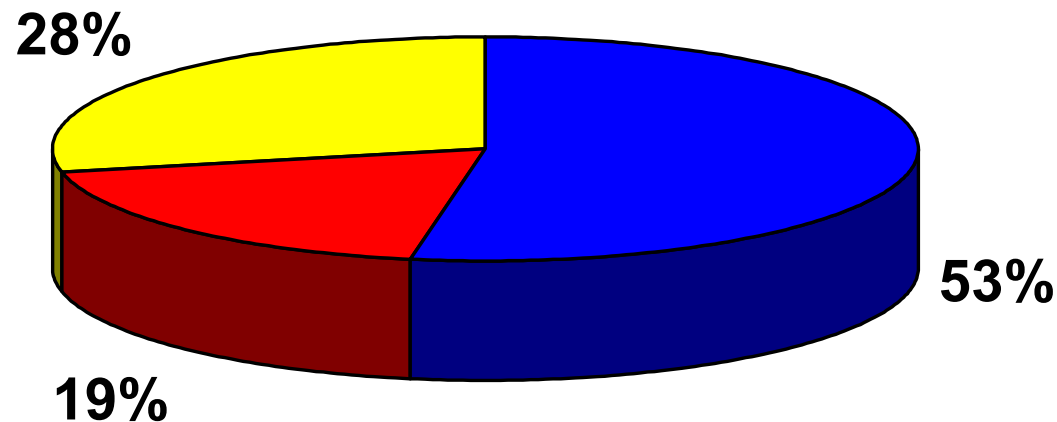
Long Term Care Professional and General Liability

Attachment I - Countrywide Loss Cost Per Occupied Bed



Long Term Care Professional and General Liability

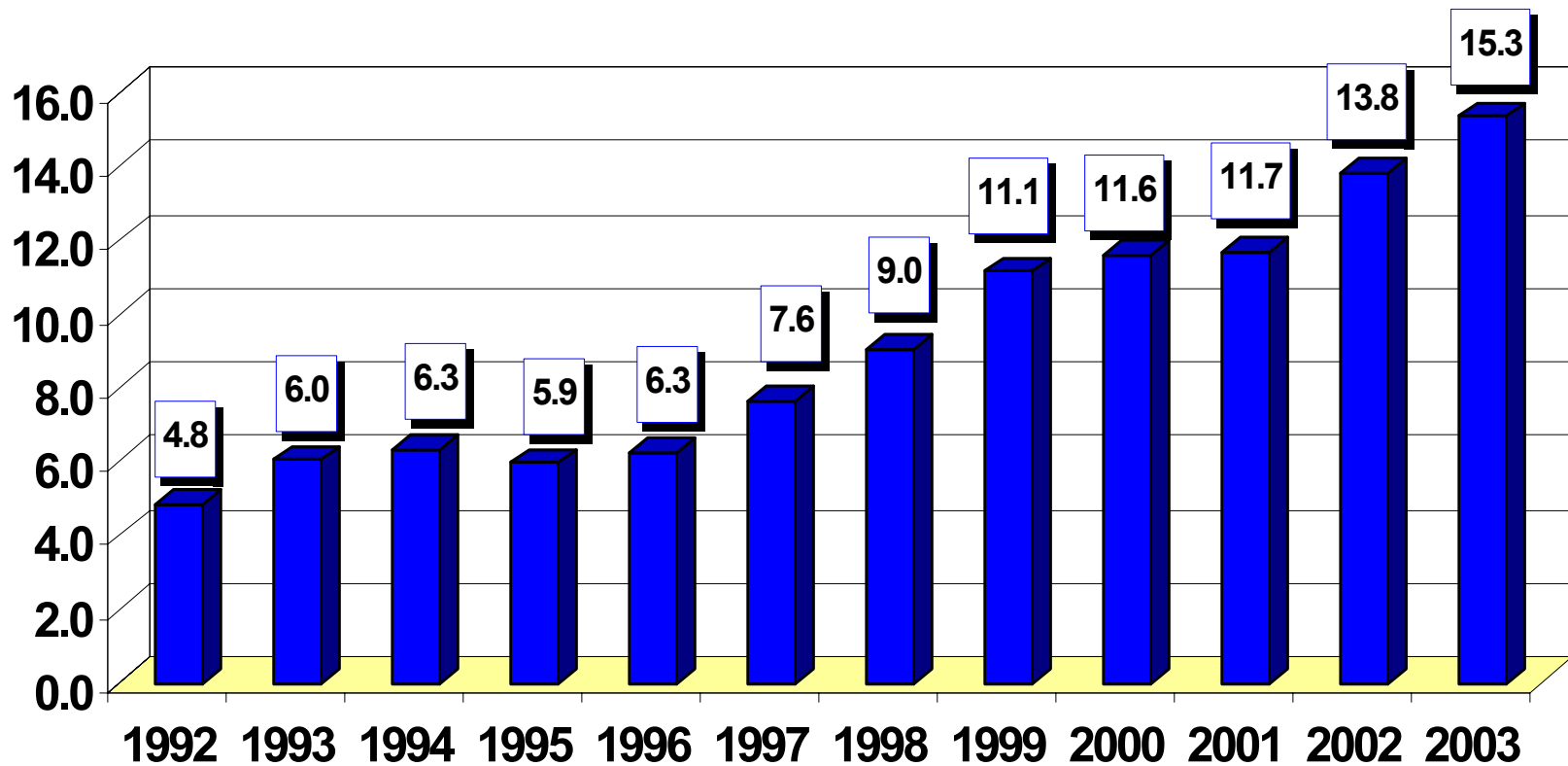
Attachment II - Distribution of Compensation



- Patient and/or Family Compensation
- Defense Costs (Defense Attorneys & Investigation)
- Plaintiff Attorney Fees

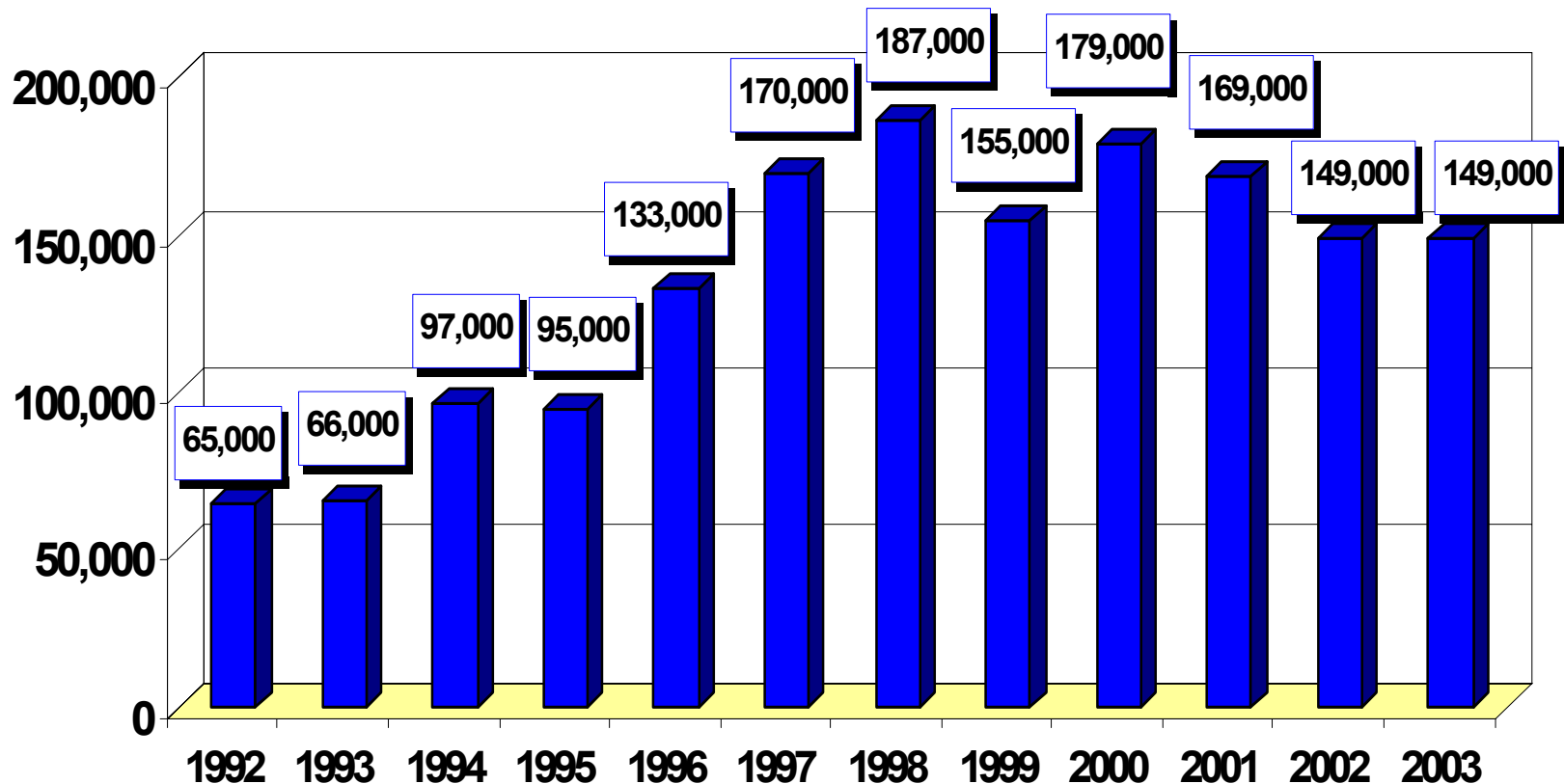
Long Term Care Professional and General Liability

**Attachment III - Countrywide Annual Number of Claims
per 1,000 Occupied Beds**



Long Term Care Professional and General Liability

Attachment IV - Countrywide Severity per Claim



Long Term Care Professional & General Liability

Attachment V - 2004 Long Term Care Loss Cost Comparison 1995
vs. 2003

